



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[WC Docket No. 12-375; FCC 12-167]**

Rates for Interstate Inmate Calling Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on the inmate calling services industry and how to ensure just and reasonable rates for inmate calling services.

**DATES:** Comments are due on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 12-375, by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lynne Hewitt Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520 or (202) 418-0484 (TTY), or via email at [lynne.engledow@fcc.gov](mailto:lynne.engledow@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 12-375, FCC 12-167, adopted on December 24, 2012, and released on December 28, 2012. The full text of this document is available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. The full text of this document may be downloaded at the following Internet address: <http://www.fcc.gov/document/rates-interstate-inmate-calling-services>. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554. To request alternate formats for persons with disabilities (e.g. Braille, large print, electronic files, audio format, etc.) or reasonable accommodations for filing comments (e.g. accessible format documents, sign language interpreters, CARTS, etc.), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

## **I. INTRODUCTION**

1. In this item we grant two longstanding petitions for rulemaking filed in the docket that seek to "secure the 'just and reasonable' interstate rates for prisoners required by Section 201(b) of the Communications Act" by initiating this Notice of Proposed Rulemaking (NPRM or Notice) to consider changes to our rules governing rates for interstate interexchange inmate calling services (ICS). In the first petition for rulemaking, filed in 2003, (First Wright Petition), Petitioners requested that the Commission "prohibit exclusive inmate calling service agreements and collect call-only restrictions at privately-administered prisons and require such facilities to permit multiple long distance carriers to interconnect with prison telephone systems. . . ." In the second petition for rulemaking, filed in 2007, (Alternative Wright Petition), Petitioners proposed that the Commission require debit calling, prohibit per-call charges and establish rate caps for all interstate, interexchange inmate calling services. The Commission received

significant comment on the two Petitions for Rulemaking. Recently, there has been substantial renewed interest and comment in this docket highlighting both the wide disparity among interstate interexchange ICS rate levels and significant public interest concerns. We believe it is appropriate to seek comment to refresh the record and consider whether changes to our rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities.

## **II. BACKGROUND**

### **A. Description of Inmate Calling Services**

2. Inmate calling services are typically limited to collect or debit-based calling from payphones. Collect calls from a correctional facility usually incur a two-part charge; a per-call set up charge and a per-minute charge. Debit calling (charges are deducted from an inmate's account), typically incurs a per-minute charge only. Based on the record, the per-call charge can vary significantly from \$0.50 to \$3.95 and per-minute charges can vary significantly from \$0.05 to \$0.89. Some commenters state that ICS rates vary based on such factors as facility size, call volume and the jurisdiction of the call. Local and intrastate ICS rates are generally set by the states. The Commission does not currently regulate interstate ICS rates. ICS rates in federal prisons are set by the Federal Bureau of Prisons.

3. Public Policy Considerations. Petitioners and some commenters argue that ICS rate reform is a public policy imperative because high ICS rates limit the ability of most inmates to maintain contact with their families. Commenters point to studies showing that regular contact with family reduces inmate recidivism. Commenters note that regular telephone contact with loved ones also benefits those receiving the calls, including inmates' children, as inmates may be assigned to correctional facilities far from their homes thus limiting in-person visits. Commenters contend that regular telephone contact between inmates and their loved ones at high rates places a heavy burden on inmates' families because families typically bear the burden of paying for the calls. In addition, they

assert that the lack of regular telephone contact between inmates and their loved ones is a hardship on families because neither the inmates nor their families can afford the high rates.

4. We note that the Government Accountability Office (GAO) has twice recognized the conclusions of Federal Bureau of Prison officials that contact with family “aids an inmate’s success when returning to the community” and thus lowers recidivism. Moreover, the GAO recently found that “crowded visiting rooms make it more difficult for inmates to visit with their families” and that “[t]he infrastructure of the facility may not support the increase in visitors as a result of the growth in the prison population.” As such, we believe that regular telephone contact between inmates and their families is an important public policy matter, and that we should consider the impact that interstate ICS rates have.

5. Unique Characteristics of ICS. The Commission has recognized that ICS differs from traditional payphone services in a number of respects. First, although barriers to entry are low for payphone providers in most locations, a correctional facility typically grants an exclusive contract to a single ICS provider for a particular facility, essentially creating a monopoly at that facility. As such, competition exists for ICS contracts but once an ICS provider wins a contract it becomes the sole ICS provider in that facility. Unlike non-incarcerated customers who have access to alternative calling platforms on public payphones, inmates only have access to payphones operated by a single provider for all available services at that payphone. These contracts additionally often include a site commission or location fee paid to the correctional facility. The Commission has previously found that “[t]o have a realistic chance of winning a contract, the bidder must include an amount to cover commissions paid to the inmate facility.” Five years ago Petitioners estimated that “commissions add an average of 43 percent . . . to all other costs before commissions.”

6. Security considerations also differentiate ICS from public payphone services. For instance, correctional facilities typically use an automated voice-processing system to screen and process inmate collect calls rather than a pre-subscribed operator service provider. ICS providers also employ blocking mechanisms to prevent inmates from making direct-dialed (that is calls made without using the

automated voice-processing system) calls, access code calls, 800/900 number calls, or calls to restricted individuals, such as judges or witnesses. Correctional facilities also require that payphones be monitored for frequent calls to the same number. Moreover, correctional facilities often require periodic voice overlays that identify the call as being placed from a correctional facility, as well as listening and recording capabilities for all calls. Commenters note that the costs of these security features, hardware and software costs, and training for staffers make ICS more costly to provide than public payphone service.

7. The record to date indicates a wide disparity in ICS rates between states. These rates reflect the higher security and network costs that are inherent in ICS; the disparity thus may reflect whether the rates in question include site commissions. For instance, correctional facilities located in states that do not require commissions from ICS providers often charge lower ICS rates. For example, New York state prohibited site commissions in state prisons and interstate per-minute rates in such prisons are as low as \$0.048. In contrast, in Colorado, a state that has site commissions, interstate per-minute rates can be as high as \$0.89. However, in Montana, another state with site commissions, the interstate per-minute rate is \$0.12. Such record evidence raises questions about whether ICS rates accurately reflect the costs of providing ICS and whether site commission payments are a reasonable cost of providing ICS that therefore should be recovered in the ICS rates inmates are charged.

8. We seek comment on the Commission's legal authority in Section III.E below to address the issues raised by the Petitioners. While we believe that we have jurisdiction to address interstate ICS calls we believe those calls may be a relatively small subset of all inmate telephone calls. However, several commenters argue that interstate calls are often the most expensive and therefore Commission action, such as establishing an interstate rate benchmark, would nevertheless be effective in helping lower the cost of contact between inmates and their families. In the interest of developing a complete and current record, this Notice seeks comment on the reasonableness of current ICS rates and what steps the Commission can and should take to ensure reasonable ICS rates going forward.

**B. Inmate Calling Order on Remand and NPRM**

9. On February 12, 2002, the Commission adopted an order addressing whether section 276 of the Communications Act of 1934, as amended, (Act) requires the Commission either to preempt state rate caps on local collect calls or permits ICS providers to collect an additional per-call surcharge above state rate caps on local collect calls. In the Inmate Calling Order on Remand and NPRM, the Commission concluded that section 276 does not require either preemption or an additional surcharge and also concluded that it was unnecessary to impose nonstructural safeguards on the Bell Operating Companies' provision of ICS services. In making these determinations, the Commission recognized the unique nature of ICS, and concluded that the "fair compensation" requirement of section 276 did not necessarily mean that payphones with higher costs should receive greater compensation than other payphones.

10. In the NPRM portion of the Inmate Calling Order on Remand and NPRM, the Commission asked "whether the current regulatory regime applicable to the provision of inmate calling services is responsive to the needs of correctional facilities, ICS providers, and inmates, and, if not, whether and how we might address those unmet needs." Specifically, the Commission sought detailed comments on ICS rates, commissions paid to the confinement facilities, cost and revenue data, information from states on how they handle inmate calling, alternatives to the current system, and information on call disconnections. The NPRM also proposed methods to lower ICS rates, including allowing the use of debit cards or commissary accounts.

**C. Two Petitions for Rulemaking**

**1. First Wright Petition**

11. In 2000, current and former inmates of Corrections Corporation of America (CCA) confinement facilities, and the individuals that receive their telephone calls, filed a class-action lawsuit against CCA seeking relief from exclusive dealing arrangements CCA had with ICS providers. The plaintiffs alleged that the exclusive dealing resulted in restricted telephone service choices for inmates and

caused rates for those services to substantially increase, in violation of various constitutional and statutory provisions, including section 201(b) of the Act. On August 22, 2001, the United States District Court for the District of Columbia dismissed the lawsuit. Pursuant to the doctrine of primary jurisdiction, the court directed the parties to file the appropriate pleadings with the Commission to resolve the issues the plaintiffs raised.

12. On November 3, 2003, Petitioners filed the First Wright Petition with the Commission pursuant to the court's directive. Petitioners requested that the Commission address high ICS rates by prohibiting exclusive ICS contracts and collect-call-only restrictions at privately-administered prisons, and requiring such facilities to permit multiple long-distance carriers to interconnect with prison telephone systems. The Commission sought and received comment on the First Wright Petition.

## **2. Alternative Wright Petition**

13. On March 1, 2007, Petitioners filed an alternative rulemaking petition proposing that the Commission address high ICS rates by requiring debit calling, prohibiting per-call charges and establishing rate caps for all interstate, interexchange ICS. The Commission sought and received comment on the Alternative Wright Petition. On August 15, 2008, a group of ICS providers filed the Inmate Calling Services Interstate Call Cost Study (ICS Provider Proposal), which included cost information to support their proposed rate methodology and rate levels for ICS.

14. As described fully below, in this Notice, we seek updated information on the ICS market and request answers to questions raised by the Petitioners. We specifically request comment from state departments of corrections and state officials responsible for prison telecommunications decision making. After the ICS Provider Proposal was filed, a consensus appeared to be forming about how best to address inmate calling; we hope to revive those discussions and consensus building through our action today.

15. Since the Inmate Calling Order on Remand and NPRM was released in 2002, the Commission has received numerous comments regarding ICS reform. Responses to the NPRM and

subsequent requests for comment on the First Wright Petition and the Alternative Wright Petition have provided an extensive record on ICS reform. We believe it is appropriate at this time to open a new docket exclusive to ICS reform in light of the lengthy record, as well as the fact that the ICS record is part of the general payphone docket (CC Docket No. 96-128) which relates to competition among payphone providers and the deployment of payphone services. As such, comments and reply comments on this Notice must be filed in WC Docket No. 12-375. We incorporate comments, reply comments and *ex parte* filings from CC Docket No. 96-128 into WC Docket No. 12-375.

### **III. ENSURING ICS RATES ARE JUST AND REASONABLE**

16. There are multiple proposals to address ICS rates in the record. We seek to balance the goal of ensuring reasonable ICS rates for end users with the security concerns and expense inherent to ICS within the statutory guidelines of sections 201(b) and 276 of the Act. Ensuring just and reasonable ICS rates may be accomplished through incentives or regulations, or a combination of both; we seek comment on these proposals below.

#### **A. Rate Caps in the ICS Market**

17. In the Alternative Wright Petition, Petitioners requested that the Commission set rate caps for interstate long distance ICS. Specifically, Petitioners requested that the Commission “establish a benchmark rate for domestic interstate interexchange inmate debit calling service of \$0.20 per minute and a benchmark rate for domestic interstate interexchange inmate collect calling service of \$0.25 per minute, with no set-up or other per-call charge.” The Petitioners used 15 and 20 minute call durations to calculate the rate caps and based their proposed rate caps on then current Federal Bureau of Prison and several individual states’ ICS rates. We seek comment on the elements of the rate cap proposal and whether the criteria used to develop the proposed caps are appropriate.

18. Per-Call Charge. Each time an inmate places a payphone call there are typically two elements that make up its cost – a per-call set up charge and a per-minute charge. We first seek comment



on the per-call charge. Petitioners propose eliminating the call set up or per-call charge, which can be as much as \$3.95, and allowing only per-minute charges. We seek comment on this proposal. What costs are associated with the per-call charge? Would the elimination of the per-call charge help ensure just and reasonable ICS rates? Would a prohibition on per-call charges result in below-cost service?

19. Petitioners note that inmates often incur multiple per-call charges when calls are dropped after a pause in conversation. We seek data on the average number of dropped calls that inmates experience. We request that commenters suggest ways to prevent multiple per-call charges for a single conversation that is disconnected by security triggers and subsequently allowed to continue while maintaining appropriate security measures. For example, if the per-call charge is maintained, Petitioners suggest that if a disconnected call is reinitiated within two minutes, it should not incur another per-call charge. Should the Commission require such a measure? What other steps could be taken to prevent inmates from being charged multiple per-call charges for what amounts to one conversation? What are the costs associated with call security and are they incurred on a fixed or per-call basis?

20. Per-Minute Rate Caps. Would the per-minute rate cap approach proposed by the Petitioners ensure just and reasonable rates? Are the proposed rate caps just and reasonable consistent with sections 201 and 276 of the Act? If not, would different rate caps be appropriate? What factors should the Commission consider in determining an appropriate per-minute rate cap? Commenters advocating an alternative per-minute rate cap should provide specific, detailed cost information and other relevant data to support their proposed per-minute rate caps. Should the domestic interstate interexchange ICS per-minute rate cap proposed above apply to both publicly- and privately-administered correctional facilities?

21. Some commenters argue that the proposed per-minute rate caps are arbitrary and capricious because they would preclude providers from recovering their legitimate costs of providing service. Others argue that the Alternative Wright Petition proposal is confiscatory or may otherwise put ICS providers out of business. We seek evidence in support of or disproving such arguments.

Commenters also argue that the adoption of per-minute rate caps would chill innovation and ultimately result in reductions in service levels because the proposed caps will not adequately compensate the providers, thus making ICS a less attractive service to offer. Others note that new providers are entering the ICS market. Commenters supporting such assertions are asked to provide specific, detailed information about the ICS market to support their positions and describe how market trends influence ICS rates.

22. In the Alternative Wright Petition, Petitioners argue that several benefits would accrue from setting per-minute rate caps, such as administrative ease and the absence of jurisdictional challenges. We seek comment on this argument. Can commenters identify any other benefits to introducing per-minute rate caps? What are the perceived problems or challenges associated with introducing per-minute rate caps? For example, parties argue that differences between correctional facilities including size, location, security levels, facility age and staffing levels will not allow a one size fits all solution, such as per-minute rate caps. Is this accurate? How can the Commission establish a solution that addresses the many variations among confinement facilities?

23. If the Commission decides to implement rate caps in the ICS market how should we? What additional data, if any, does the Commission require to set rates? Would a rate cap approach require the Commission to conduct rate cases, as some commenters suggest? We seek comment on the best ways to determine just and reasonable caps for ICS rates.

24. Marginal Location Methodology. In 2008, ICS providers submitted the ICS Provider Proposal for ICS rates. The ICS Provider Proposal uses the “marginal location” methodology, previously adopted by the Commission to calculate public payphone rates, to calculate proposed ICS rates. The ICS providers believe the “marginal location” methodology provides a “basis for rates that represent ‘fair compensation’ as set forth in” section 276(b)(1)(A) of the Communications Act. The ICS Provider Proposal advocates a two-part rate structure that includes both a fixed per-call charge and a per-minute rate, arguing that per-call charges must be maintained to cover such expenses as equipment costs and

monthly line charges. The ICS providers determined that the methodology and data yield a requisite fixed per-call charge of \$1.56 with a per-minute rate of \$0.06 for debit calls, and a fixed per-call charge of \$2.49 with a per-minute rate of \$0.07 for collect calls, applicable to all ICS providers. In response, Petitioners point out that the ICS Provider Proposal “largely supports Petitioners’ requested benchmark rates.” Petitioners calculate that the ICS Provider Proposal two-part rate structure equals rate caps of \$0.16 per minute for a 15-minute debit call and \$0.24 per minute for a 15-minute collect call.

25. We seek comment on whether the ICS Provider Proposal methodology would result in a just and reasonable rate. We also encourage commenting parties that disagree with the ICS Provider Proposal or proposed methodology to provide alternative methodologies supported by sufficiently-detailed data. We seek comment on whether the ICS Provider Proposal has provided sufficient cost, demand, and revenue detail to allow the Commission to determine whether the proposed rates are just and reasonable.

26. We also seek comment on whether the underlying cost and demand factors for public payphones and ICS are similar enough to justify using a cost methodology designed for public payphones to set ICS rates. In particular, we seek comment on the extent to which ICS rates and call volumes vary among prisons across the country, and how the rates and call volumes compare with the variation that occurs with public payphones. We seek comment on whether an additional justification exists for adopting this cost methodology.

27. Impact of Rate Reductions on Call Volumes. We seek comment on whether call volumes have increased where rates have been lowered, and the resulting impact on ICS providers’ revenues. We note that the 2011 GAO Report found that only approximately 25 percent of inmates in the Federal Bureau of Prisons use their entire monthly allotted minutes for calls and that if rates were lowered it would encourage greater communications with families, which the Bureau of Prisons “has stated facilitates the reintegration of inmates into society upon release from prison.” Do other correctional

facilities find that incarcerated individuals are not using all their allotted time to make calls? How much time is allotted, and what is the percentage of individuals who use all their time?

28. Tiered Pricing. A recent ex parte filing by Petitioners attached a transcript from a New Mexico Public Service Commission hearing that described the possible use of a tiered, by monthly volume of minutes, pricing structure in the state. Do commenters believe a per-minute rate set by usage volume is a viable option? Would tiered pricing address concerns over a one size fits all reform approach such as rate caps? What factors should the Commission consider in establishing pricing tiers? What are potential problems with tiered pricing?

29. Market Forces. Petitioners note that telecommunications costs in general, and long distance costs in particular, are decreasing and therefore, they believe, ICS rates should follow the market and decrease as well. Some participants in this proceeding note that “rates in the largest majority of correctional facilities are moving in a downward trend.” Is this accurate? Can commenters provide concrete examples of decreases in ICS rates?

30. Collect Calling v. Debit Calling. The Alternative Wright Petition suggests two different rate caps: one for collect calling and one for debit calling. A collect call is a call in which the called person pays for the call and a debit call deducts the cost of the call from a prepaid account. Petitioners argue that collect calling is more expensive because its costs include billing costs and uncollectibles, while debit calling is less expensive because it reduces staff responsibilities and uncollectibles. Do commenters agree that there should be different per-minute rate caps for collect and debit calling? What are the benefits of debit calling? For example, do commenters believe that debit calling will exert downward pressure on collect calling rates?

31. Some commenters have expressed concern about the expense and difficulty of implementing debit calling. Specifically, they cite difficulty in blocking restricted telephone numbers, the expense of purchasing new equipment and the challenges of establishing new processes and procedures and verifying calling party identities. Parties have also expressed safety concerns related to debit calling.

Some prisons already allow for debit calling. For example, the Federal Bureau of Prisons allows debit calling in some of its facilities and the state of Iowa offers debit calling only. What safety concerns are raised by debit calling service, and how have those concerns been addressed where debit calling already is permitted? Commenters also note the increased administrative workload and cost associated with debit calling caused by such tasks as issuing PINs to each inmate in facilities with high turnover. Have commenters experienced such challenges, and how have they been overcome? What are the other pros or cons of debit calling? We seek comment on ICS providers' overall experiences with offering debit calling.

32. How many correctional facilities currently offer debit calling? Has debit calling become more common? What are the current ratios of debit to collect calling in correctional facilities? Should the Commission mandate debit calling in privately and publicly-administered correctional facilities? One commenter says it offers debit calling to all of the facilities it serves, but it is not practical to mandate debit calling because not all correctional facilities want the service. What are other challenges to mandating debit calling?

33. Prepaid Calling. Commenters suggest prepaid calling as an alternative to collect and debit calling. Prepaid calling allows inmates or their family members to prepay for minutes, usually at a discount. This is different from debit calls, in which money is deducted from an account, but the minutes are not purchased in advance. Commenters argue that the benefits of this approach may include administrative ease for the providers, increased safety, controlled costs for call recipients, and eliminating the need to block calls because of a call recipients' credit standing. However, Petitioners note that there are outstanding questions with prepaid calling such as: how to handle monthly fees; how to load an inmate's account; and minimum required account balance. If these issues can be sufficiently addressed, is prepaid calling a viable ICS option? Do any ICS providers currently offer prepaid calling? What are some other concerns or considerations with prepaid calling?

34. Intrastate-Interstate Parity. Another alternative would be to adopt an intrastate-interstate parity principle that would require that rates for interstate, long-distance calls not exceed rates for intrastate, long-distance calls. Rates for intrastate, long-distance calls are typically set by state public utility commissions, and those commissions may set rates that take into account the varying cost of providing inmate calling services within each state given the security and other features required by state law. To the extent that interstate rates for inmate calling services are significantly higher than intrastate rates, how would a requirement that ICS providers set interstate rates at a level no higher than intrastate, long-distance rates affect the justness and reasonableness of those rates? How many states set rates specifically for ICS? What is the rate structure for ICS calls in those states, and what are the rates for intrastate, long-distance calls? How do states that set specific ICS rates ensure that ICS providers are “fairly compensated?” How do intrastate, long-distance rates differ between states that establish general rate caps and those that set specific caps for ICS? If the Commission adopts a parity principle, should there be any exceptions to that principle?

### **C. Additional Proposals in the Record**

35. There are multiple other proposals in the record that do not directly address per-call and per-minute ICS rates. We seek comment on any other proposals parties contend address the concerns raised in this proceeding, including any proposals in the record that are not addressed below.

36. Competition in the ICS Market. The First Wright Petition requested that the Commission mandate the opening of the ICS market to competition and prohibit collect call only restrictions in privately-administered correctional facilities. ICS contracts are typically exclusive; competition appears to exist in winning an ICS contract but once an ICS provider wins a contract it becomes the sole provider. How do exclusive contracts influence ICS rates? How would competitive ICS services be provided? The First Wright Petition also argued that the collect calling-only limitations imposed by many confinement facilities increase costs to both ICS providers and inmates that are not outweighed by corresponding

benefits and that such limitations should therefore be prohibited. To the extent ICS is still limited to collect calling in some correctional facilities, we seek comment on the rationale behind this restriction.

37. Site Commissions. ICS contracts frequently include a site commission or location rent which is paid to the facility and in some instances may go to fund inmate services at the facility. What types of inmate services or other services do site commissions fund? How do site commissions in ICS contracts vary by facility? Petitioners argue that ICS rates are inflated to cover commissions, which can be as much as 65 percent of gross revenues, causing the rates to be unreasonable in violation of section 201(b). Is this accurate? We seek updated data on how much these site commissions are and how much they add to per-call costs. The FCC has previously found that “under most contracts, the commission is the single largest component affecting the rates for inmate calling service” and “because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.” Do commenters believe this is still accurate? The Commission has also found that “location rents are not a cost of payphones, but should be treated as profit.” Do commenters agree with that conclusion?

38. Some site commissions are mandated by state statute, while several states have reduced or eliminated commissions in ICS contracts. If a state has reduced or eliminated site commissions, how has any resulting rate transition been handled? How has the lowering or elimination of site commissions impacted rates? Is this evidence that site commissions are not necessary, or is it evidence that the market is working and the Commission need not intervene? Must the Commission address site commissions and the effect they have on ICS rates in order to ensure just and reasonable ICS rates?

39. Offer No-Cost Calling. In the Alternative Wright Petition, Petitioners include a suggestion they contend will advance the Commission’s universal service goals and provide all inmates valuable contact with the outside world. Specifically, Petitioners suggest that ICS providers provide a certain amount of no-cost calling per inmate per month in each of the facilities they serve in exchange for the right to charge a higher per-minute rate. Petitioners suggest implementing rate caps of \$0.22 per

minute for debit calling and \$0.275 per minute for collect calling if ICS providers offer 20 minutes of free calling per inmate per month. Can or should the Commission mandate a certain amount of free calling per inmate per month, or should this be offered at the providers' discretion? What legal questions are raised by this proposal? What other considerations are raised by this proposal?

40. Billing-Related Call Blocking. Petitioners also express concern over billing-related call blocking in correctional facilities. Specifically, Petitioners note that ICS providers are increasingly unable or unwilling to enter into agreements with LECs to provide for ICS providers' billing the LECs' customers receiving collect calls from inmates. As a result, ICS providers cannot bill for an increasing percentage of inmate calls and thus "block inmate collect calls to numbers served by LECs with which the service providers have no billing arrangements." Petitioners argue that in facilities where collect calling is the only option, this practice may ultimately prevent inmates from being able to make any telephone calls. Commenters note that many ICS providers have solutions to "ensure that inmates can contact customers served by these CLECs that refuse to bill for collect calls." Does this practice continue? Petitioners argue that debit calling, which requires pre-payment, may prevent the need to block calls when the ICS provider does not have a billing arrangement with the terminating LEC. Is this accurate? Do commenters have experience with billing-related call blocking? Can commenters provide data on the average number of calls that are blocked per month and the reason for the blocking? Are there ways, other than mandating debit calling, to deter or prevent billing-related call blocking?

41. Non-Geographic Numbers. ICS providers have argued that lowering interstate calling rates may create an incentive for call recipients to obtain telephone numbers from other states, perhaps from wireless or VoIP providers, to take advantage of the lowered interstate rates. Petitioners counter that the opposite is currently happening; call recipients are obtaining telephone numbers, from wireless or VoIP providers, that are local to the prison to take advantage of lower local calling rates. Have commenters experienced either of these practices? Do these practices raise any security concerns and if so what are those concerns?



42. Disabilities Access. There is evidence in the record to indicate that inmates with hearing disabilities may not have access to ICS at reasonable rates using TTYs. The record suggests that because the average length of a telephone conversation using a TTY is approximately four times longer than a voice telephone conversation, deaf and hard of hearing inmates who use TTYs have to pay more than their hearing counterparts. The record also suggests that TTY users have had to pay additional fees for connecting to a TTY relay operator. We seek comment on the types of ICS access that individuals who are deaf or hard of hearing experience during their incarceration. Where such access to ICS is provided, are the rates the same as those available to those without a disability? If the rates differ, what is that difference and what are the explanations for such difference? We note that section 276(b)(1)(A) specifically exempts “telecommunications relay service calls for hearing disabled individuals” from the Commission-established “per call compensation plan” ensuring that ICS providers are “fairly compensated.” How should the Commission take this exemption into account in examining rates?

43. Updated Data. We seek updated data from all interested parties and the public, but especially from ICS providers. Commenters note that the record regarding nationwide interstate ICS rates is limited to an “analysis of prison phone contracts nationwide” that was conducted by Prison Legal News in April 2011. As such, we seek comment on the accuracy and reliability of the study. In addition, from independent research we have found more-current state rates, which continue to demonstrate a range of prices for ICS calls among states. For example, for a 15-minute interstate call, we found the following rates: \$6.65 in California; \$2.04 in Montana; \$6.45 in Texas; and \$16.55 in Idaho. We encourage commenters to submit the most up-to-date information available regarding interstate ICS rates to aid us in developing a clearer understanding of the ICS market. This includes per-call and per-minute rates, information on commissions and what percentage of a rate they comprise, the number of disconnected calls, the average length of calls, and how calls break out by type, i.e., collect, prepaid and debit.

44. We also seek comment on whether the Alternative Wright Petition and ICS Provider Proposal are grounded in sufficiently-reliable data. For example, the ICS Provider Proposal contains data

for less than 30 correctional facilities, none of which impose site commissions. Is this too small a sample, or a non-representative sample, on which to base a nationwide solution? ICS providers argue that in calculating their proposed rate caps the Petitioners relied on data from facilities with low cost calling. We therefore invite parties to comment on whether the data supporting the First Wright Petition, the Alternative Wright Petition and the ICS Provider Proposal is representative of correctional facilities across the country.

45. Existing Contracts. Petitioners suggest that if the Commission implements a rate cap it should also mandate a one-year fresh look, transition period for existing ICS contracts. Petitioners envision that this transition period would allow for any necessary review and termination or renegotiation of existing ICS contracts in order to introduce rate caps which would be effective by the end of the transition period. Commenters argue that the Commission cannot insert itself into the procurement decisions of correctional agencies, and that any new ICS-related rules should not be applied to existing contracts but only to contracts entered into after the adoption of new rules.

46. Would it be appropriate to mandate a fresh look period or should any new ICS rules apply only to contracts entered into after the adoption of new rules? With renegotiated contracts, how long should the transition period last? What are typical ICS contract terms? Do such contracts usually have change of law provisions that would be triggered by a Commission order? How does the length of existing contracts affect the implementation of any of the proposals discussed above? If commenters provide alternative proposals not discussed above, they should include information on how the contractual process will function with each specific proposal. After implementing a new ICS regime, should the Commission require a periodic rate review to ensure that the rates remain just and reasonable?

47. We encourage comment on any new issues that have arisen in the ICS market or issues that have not been addressed above. We request that commenters provide evidentiary support for their comments and suggestions in this proceeding.

#### **D. Cost/Benefit Analysis of Proposals**

48. Acknowledging the potential difficulty of quantifying costs and benefits, we seek to determine whether the proposals above will provide public benefits that outweigh their costs, and we seek to maximize the net benefits to the public from any proposals we adopt. For example, commenters have argued that inmate recidivism is decreased with regular family contact. Accordingly, we seek specific comment on the costs and benefits of the proposals above and any additional proposals received in response to this Notice. We also seek any information or analysis that would help us to quantify these costs or benefits. Further, we seek comment on any considerations regarding the manner in which the proposals could be implemented that would increase the number of people who benefit from them, or otherwise increase their net public benefit. We request that interested parties discuss whether, how and by how much they will be impacted in terms of costs and benefits of the proposals included herein. We recognize that the costs and benefits may vary based on such things as the correctional facility served and ICS provider. We request that parties file specific analysis and facts to support any claims of significant costs or benefits associated with the proposals herein.

#### **E. Legal Authority**

49. We seek comment on the scope of the Commission's legal authority to regulate ICS. Section 276 of the Communications Act of 1934 (Act) requires that all payphone providers, including ICS providers, be "fairly compensated." We seek comment on our authority to address interstate interexchange ICS rates under section 276(b)(1)(A), which directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers [(PSPs)] are fairly compensated for each and every completed intrastate and interstate call." We also seek comment on our authority to address interstate interexchange ICS rates under section 201(b) of the Act, which requires common carriers to provide service at "just and reasonable" rates and authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter." Does the Commission have the jurisdiction to establish per-minute rate caps for privately- and publicly-

administered facilities? We encourage commenters to discuss additional sources of legal authority for the Commission to address ICS rates.

50. We note that only a portion of the telephone calls inmates make from correctional facilities are interstate, interexchange ICS. Many calls made from correctional facilities are intrastate local or long distance calls, which are regulated by the states. We therefore seek comment on how the Commission can encourage states to reevaluate their policies regarding intrastate ICS rates.

51. We also seek comment on how and whether use of VoIP technologies by ICS providers impacts our analysis under section 276 of the Act. To what extent are providers currently utilizing VoIP technology to provide ICS? Would the use of VoIP technology affect the authority of state regulators to address intrastate ICS rates? What authority regarding ICS rates would control in that circumstance?

52. We recognize the important role that states play in managing correctional facilities and in contracting with private correctional management companies. Some parties believe ICS is exclusively a state issue because it involves management of correctional facilities and therefore its regulation should be left to state correctional officials. How would such a conclusion be reconciled with the Commission's obligations under sections 201 and 276 and the fact that the question of the reasonableness of ICS rates was referred to the Commission under the doctrine of primary jurisdiction? Would the Commission's fulfillment of its obligations under sections 201 and 276 potentially result in preemption of states' exercise of regulatory or police power authority?

53. We also seek comment specific to the proposals discussed above. Does the Commission have the authority to disallow an additional call set up charge when inmates' calls are disconnected? Does the Commission have the legal authority to mandate that ICS providers offer debit calling? What legal authority does the Commission have to address the site commissions common in ICS contracts?

#### **IV. PROCEDURAL MATTERS**

##### **A. Filing Instructions**

54. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments and reply comments on this NPRM must be filed in WC Docket No. 12-375.

- Electronic Filers: Direct cases and other pleadings may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

## **B. Ex Parte Requirements**

55. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

## **C. Initial Regulatory Flexibility Analysis**

56. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice, of the possible significant

economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

**D. Initial Paperwork Reduction Act of 1995 Analysis**

57. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 USC 3506(c)(4).

**V. ORDERING CLAUSES**

58. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1, 2, 4(i)–(j), 201(b) and 276 of the Communications Act of 1934, as amended, 47 USC 151, 152, 154(i)–(j), 201(b) and 276, this Notice of Proposed Rulemaking IS ADOPTED.

59. IT IS FURTHER ORDERED, that the Petition of Martha Wright et al. for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking is GRANTED IN PART.

60. IT IS FURTHER ORDERED, that the Petitioners' Alternative Rulemaking Proposal is GRANTED IN PART.

61. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Notice of Proposed

Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

62. IT IS FURTHER ORDERED, that pursuant to §§ 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1) and 1.103(a), that the Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication of a summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary.

[FR Doc. 2013-01154 Filed 01/18/2013 at 8:45 am; Publication Date: 01/22/2013]